

Federal Reserve System

§ 238.72

holding company, or enforcing compliance with applicable law.

§ 238.66 Ongoing requirements.

(a) *In general.* A savings and loan holding company with an effective election to be treated as a financial holding company is subject to the same requirements applicable to a financial holding company, under sections 4(l) and 4(m) of the Bank Holding Company Act and section 804(c) of the Community Reinvestment Act of 1977 (12 U.S.C. 2903(c)) as if the savings and loan holding company was a bank holding company.

(b) *Consequences of failing to continue to meet applicable capital and management requirements.* A savings and loan holding company with an effective election to be treated as a financial holding company that fails to meet applicable capital and management requirements at § 238.63 is subject to the notice, remediation agreement, divestiture, and any other requirements described in § 225.83 of this chapter.

(c) *Consequences of failing to continue to maintain a satisfactory or better rating under the Community Reinvestment Act at all insured depository institution subsidiaries.* A savings and loan holding company with an effective election to be treated as a financial holding company that fails to maintain a satisfactory or better rating under the Community Reinvestment Act at all insured deposit institution subsidiaries is subject to the activities limitations and any other requirements described in § 225.84 of this chapter.

(d) *Notice and approval requirements for conducting financial holding company activities; permissible activities.* A savings and loan holding company with an effective election to be treated as a financial holding company may conduct the activities listed in § 225.86 of this chapter subject to the notice, approval, and any other requirements described in §§ 225.85 through 225.89 of this chapter.

Subpart H—Notice of Change of Director or Senior Executive Officer

§ 238.71 Purpose.

This subpart implements 12 U.S.C. 1831i, which requires certain savings and loan holding companies to notify the Board before appointing or employing directors and senior executive officers.

§ 238.72 Definitions.

The following definitions apply to this subpart:

(a) *Director* means an individual who serves on the board of directors of a savings and loan holding company. This term does not include an advisory director who:

(1) Is not elected by the shareholders;

(2) Is not authorized to vote on any matters before the board of directors or any committee of the board of directors;

(3) Provides only general policy advice to the board of directors or any committee of the board of directors; and

(4) Has not been identified by the Board or Reserve Bank in writing as an individual who performs the functions of a director, or who exercises significant influence over, or participates in, major policymaking decisions of the board of directors.

(b) *Senior executive officer* means an individual who holds the title or performs the function of one or more of the following positions (without regard to title, salary, or compensation): president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, or chief investment officer. *Senior executive officer* also includes any other person identified by the Board or Reserve Bank in writing as an individual who exercises significant influence over, or participates in, major policymaking decisions, whether or not hired as an employee.

(c) *Troubled condition* means:

(1) A savings and loan holding company that has an unsatisfactory rating under the applicable holding company rating system, or that is informed in writing by the Board or Reserve Bank

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that it has an adverse effect on its subsidiary savings association.

(2) A savings and loan holding company that is subject to a capital directive, a cease-and-desist order, a consent order, a formal written agreement, or a prompt corrective action directive relating to the safety and soundness or financial viability of the savings association, unless otherwise informed in writing by the Board or Reserve Bank; or

(3) A savings and loan holding company that is informed in writing by the Board or Reserve Bank that it is in troubled condition based on information available to the Board or Reserve Bank.

§ 238.73 Prior notice requirements.

(a) *Savings and loan holding company.* Except as provided under § 238.78, a savings and loan holding company must give the Board 30 days' written notice, as specified in § 238.74, before adding or replacing any member of its board of directors, employing any person as a senior executive officer, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive position if the savings and loan holding company is in troubled condition.

(b) *Notice by individual.* An individual seeking election to the board of directors of a savings and loan holding company described in paragraph (a) of this section that has not been nominated by management, must either provide the prior notice required under paragraph (a) of this section or follow the process under § 238.78(b).

§ 238.74 Filing and processing procedures.

(a) *Filing notice*—(1) *Content.* The notice required in § 238.73 shall be filed with the appropriate Reserve Bank and shall contain:

(i) The information required by paragraph 6(A) of the Change in Bank Control Act (12 U.S.C. 1817(j)(6)(A)) as may be prescribed in the designated Board form;

(ii) Additional information consistent with the Federal Financial Institutions Examination Council's Joint Statement of Guidelines on Conducting Background Checks and Change in Con-

trol Investigations, as set forth in the designated Board form; and

(iii) Such other information as may be required by the Board or Reserve Bank.

(2) *Modification.* The Reserve Bank may modify or accept other information in place of the requirements of this section for a notice filed under this subpart.

(3) *Acceptance and processing of notice.* The 30-day notice period specified in section 238.73 shall begin on the date all information required to be submitted by the notificant pursuant to this section is received by the appropriate Reserve Bank. The Reserve Bank shall notify the savings and loan holding company or individual submitting the notice of the date on which all required information is received and the notice is accepted for processing, and of the date on which the 30-day notice period will expire. The Board or Reserve Bank may extend the 30-day notice period for an additional period of not more than 60 days by notifying the savings and loan holding company or individual filing the notice that the period has been extended and stating the reason for not processing the notice within the 30-day notice period.

(b) [Reserved]

§ 238.75 Standards for review.

(a) *Notice of disapproval.* The Board or Reserve Bank will disapprove a notice if, pursuant to the standard set forth in 12 U.S.C. 1831i(e), the Board or Reserve Bank finds that the competence, experience, character, or integrity of the proposed individual indicates that it would not be in the best interests of the depositors of the savings and loan holding company or of the public to permit the individual to be employed by, or associated with, the savings and loan holding company. If the Board or Reserve Bank disapproves a notice, it will issue a written notice that explains why the Board or Reserve Bank disapproved the notice. The Board or Reserve Bank will send the notice to the savings and loan holding company and the individual.

(b) *Appeal of a notice of disapproval.* (1) A disapproved individual or a regulated institution that has submitted a notice that is disapproved under this